

APPENDIX B-6

STANDARD TERMS AND CONDITIONS FOR

- (1) TIME-AND-MATERIALS; AND,**
- (2) LABOR HOUR SUBCONTRACTS**

**APPENDIX B-6
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
1	PROHIBITION OF ASSIGNMENT (SPECIAL) (APR 1997)	1
2	DISPUTES (SPECIAL) (APR 1997)	1
3	YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999) (Applies to subcontracts and purchase orders for information technology products or services)	2
4	DEFINITIONS (SPECIAL) (JUL 1998) Derived from FAR 52-202-1 (Oct 1995)	3
5	RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (JUL 1995) Derived from FAR 52.203-6 (Applies to subcontracts exceeding \$100,000)	5
6	ANTI-KICKBACK PROCEDURES (JUL 1995) Derived from FAR 52.203-7 (FD) (Applies to subcontracts exceeding \$100,000)	5
7	LIMITATION OF PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997) Derived from FAR 52.203-12 (Applies to subcontracts exceeding \$100,000)	7
8	AUDIT AND RECORDS -- NEGOTIATION (JUN 1999) Derived from FAR 52.215-2 (FD) (Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)	13
9	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999) Derived from FAR 52.219-8 (FD) (Applies to subcontracts exceeding \$100,000)	14
10	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -- OVERTIME COMPENSATION (JUL 1995) Derived from FAR 52.222-4 (FD) (Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)	15

**APPENDIX B-6
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
11	WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996) <i>Derived from FAR 52.222-20</i> <i>(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000) ...</i>	18
12	EQUAL OPPORTUNITY (FEB 1999) <i>Derived from FAR 52.222-26</i>	18
13	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) <i>Derived from FAR 52.222-35 (FD)</i> <i>(Applies to subcontracts exceeding \$10,000)</i>	19
14	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) <i>Derived from AR 52.222-36</i> <i>(Applies to subcontracts exceeding \$10,000)</i>	22
15	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999) <i>Derived from FAR 52.222-37</i> <i>(Applies to subcontracts exceeding \$10,000)</i>	23
16	AUTHORIZATION AND CONSENT (JUL 1995) <i>Derived from FAR 52.227-1 (FD)</i>	24
17	INSURANCE -- LIABILITY TO THIRD PERSONS (SPECIAL MAY 1999) <i>Derived from FAR 52.228-7</i> <i>(Applies to cost reimbursement subcontracts)</i>	26
18	FEDERAL, STATE, AND LOCAL TAXES (COMPETITIVE SUBCONTRACT) (JAN 1991) <i>Derived from FAR 52.229-3</i> <i>(Applies to fixed price subcontracts exceeding \$100,000)</i>	28
19	FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE SUBCONTRACT) (JAN 1991) <i>Derived from FAR 52.229-4</i> <i>(Applies to fixed price subcontracts exceeding \$100,000</i>	29

**APPENDIX B-6
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
20	TAXES -- SUBCONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984) <i>Derived from FAR 52.229-5</i>	30
21	LIMITATION OF COST (APR 1984) <i>Derived from FAR 52.232-20</i> <i>(Applies to fully funded, cost reimbursement subcontracts)</i>	31
22	LIMITATION OF FUNDS (APR 1984) <i>Derived from FAR 52.232-22</i> <i>(Applies to incrementally funded, cost reimbursement subcontracts)</i>	32
23	BANKRUPTCY (JUL 1995) <i>Derived from FAR 52.242-13</i> <i>(Applies to subcontracts exceeding \$100,000)</i>	34
24	STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT - <i>Derived from FAR 52.242-15</i>	35
25	CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987) <i>Derived from FAR 52.243.3</i>	36
26	LOWER-TIER SUBCONTRACTS (AUG 1998) <i>Derived from FAR 52.244-2</i> <i>(Applies to all cost reimbursement subcontracts, and letter; fixed price; time and material; and labor hour subcontracts exceeding \$100,000)</i>	36
27	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998) <i>Derived from FAR 52.244-6</i> <i>(Applies to solicitations and subcontracts for supplies and services other than commercial items)</i>	39
28	GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984) <i>Derived from FAR 52.245-4</i> <i>(Applies to fixed price; time and material; labor hour subcontracts where Government Furnished Property acquisition cost is \$100,000 or less)</i>	40

**APPENDIX B-6
INDEX**

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
29	GOVERNMENT PROPERTY -- TIME-AND-MATERIAL, OR LABOR HOUR SUBCONTRACTS (JAN 1986) <i>Derived from FAR 52.245-5</i> <i>(Applies to cost reimbursable subcontracts exceeding \$100,000)</i>	41
30	INSPECTION -- TIME-AND-MATERIAL AND LABOR-HOUR (JAN 1986) <i>Derived from FAR 52.246-6</i>	47
31	PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JAN 1997) <i>Derived from FAR 52.247-63 (FD)</i>	49
32	TERMINATION (COST-REIMBURSEMENT) (SEP 1996) AND ALTERNATE IV (TIME-AND-MATERIAL OR LABOR-HOUR (SEP 1996) <i>Derived from FAR 52.249-6 (FD)</i> <i>(Applies to cost reimbursement subcontracts except subcontracts for research and development work with educational or nonprofit institutions)</i>	50
33	EXCUSABLE DELAYS (APR 1984) <i>Derived from FAR 52.249-14 (FD)</i> <i>(Applies to cost reimbursement subcontracts on a fee basis)</i>	55
34	REFUND OF ROYALTIES (FEB 1995) <i>Derived from DEAR 952.227-9 (FD)</i>	56
35	FOREIGN TRAVEL (FEB 1997) <i>Derived from DEAR 952.247-70 (FD)</i>	57
36	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997) <i>Derived from DEAR 970.5204-2 (FD)</i> <i>(Applies to subcontracts that involve complex or hazardous work that is to be performed on a Government-owned or -leased facility.)</i>	57
37	ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996) <i>Derived from DEAR 970.5204-9 (FD)</i>	60
38	PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984) <i>Derived from DEAR 970.5204-19 (FD)</i>	62
39	PERMITS OR LICENSES (APR 1984) <i>Derived from DEAR 970.5204-29</i>	62
40	ACCESS SECURITY (SPECIAL)(APR 1999)	62

CLAUSES

CLAUSE 1 - PROHIBITION OF ASSIGNMENT (SPECIAL) (APR 1997)

- A. Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by the NREL Subcontract Administrator.
- B. When directed by DOE, the NREL Division of Midwest Research Institute may assign all its rights and obligations under this subcontract to DOE or its designee.

CLAUSE 2 - DISPUTES (SPECIAL) (APR 1997)

- A. The parties agree that the appropriate forum for resolution of any dispute or claim pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 - 1. Subject to paragraph (A)(2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
 - 2. Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not presented, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- B. Any substantive issue of law in such dispute, claim, or litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- C. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any dispute, claim, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.
- D. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- E. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

CLAUSE 3 - YEAR 2000 CERTIFICATION AND WARRANTY OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES (SPECIAL)(FEB 1999)

(Applies to subcontracts for information technology products or services)

A. Definitions

1. “Year 2000 Compliance,” as used in this clause, means that the information technology products and services delivered or developed under this subcontract accurately process date/time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations, to the extent that other information technology, used in combination with the information technology being delivered or developed under this subcontract, properly exchanges date/time data with it.
2. “Information technology products and services” as used in this clause, include, but are not limited to, hardware, software, and/or firmware and embedded systems or any other electro-mechanical or processor-based systems or services.
3. “Date/time data,” as used in this clause, includes but is not limited to, calculating, comparing, and sequencing.

B. Certification

The delivery or development of information technology products or services by the Subcontractor/Supplier shall constitute constructive certification that the information technology products or services under this subcontract demonstrate Year 2000 Compliance.

C. Warranty

The Subcontractor/Supplier warrants that each commercial or noncommercial information technology product or service delivered or developed under this subcontract is Year 2000 Compliant. If the subcontract requires that specific information technology products or services must perform as a system in accordance with the foregoing warranty, then this warranty shall apply to those products or services as a system.

D. Duration and Remedies

The duration of this warranty and the remedies available to NREL/Government for breach of this warranty shall be as defined in, and subject to: 1) the terms and limitations of the general warranty provisions of this subcontract; or, 2) the terms and limitations of the Subcontractor's/Supplier's standard commercial warranty or warranties contained in this subcontract.

Notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to NREL/Government under this Year 2000 Compliance warranty shall include repair or replacement, at no additional cost to NREL/Government, of any information technology product or service where noncompliance is discovered and made known to the Subcontractor/Supplier in writing within ninety (90) days after acceptance. Nothing in this

warranty shall be construed to limit any rights or remedies NREL/Government may otherwise have under this subcontract with respect to defects other than Year 2000 compliance.

E. Subcontractor/Supplier as Distributor

If the Subcontractor/Supplier is a distributor of technology information products obtained from third party manufacturers, the Subcontractor/Supplier agrees to obtain from the third party manufacturers certifications and warranties that substantially conform to the requirements of this clause.

F. Lower-tier Subcontracts

The Subcontractor/Supplier agrees to insert terms that conform substantially to the language of this clause, including this paragraph F, in all lower-tier subcontracts/purchase orders under this subcontract.

CLAUSE 4 - DEFINITIONS (SPECIAL) (JUL 1998)

Derived from FAR 52.202-1 (OCT 1995)

- A. "Head of the agency" also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.
- B. "Commercial component" means any component that is a commercial item.
- C. "Commercial item" means --
1. Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that --
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 2. Any item that evolved from an item described in paragraph (C)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;
 3. Any item that would satisfy a criterion expressed in paragraphs (C)(1) or (C)(2) of this clause, but for --
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor"

modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

4. Any combination of items meeting the requirements of paragraphs (C)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 5. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (C)(1), (2), (3), or (4) of this clause, and if the source of such services --
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 7. Any item, combination of items, or service referred to in subparagraphs (C)(1) through (C)(6), notwithstanding the fact that the item, combination or items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of the subcontractor; or
 8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and Local Governments.
- D. "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- E. "Nondevelopmental item" means --
1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local Government, or a foreign Government with which the United States has a mutual defense cooperation agreement;
 2. Any item described in paragraph (E)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial

marketplace in order to meet the requirements of the procuring department or agency; or

3. Any item of supply being produced that does not meet the requirements of paragraph (E)(1) or (E)(2) solely because the item is not yet in use.
- F. "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
- G. Except as otherwise provided in this subcontract, the term "lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this subcontract.
- H. The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.
- I. The term "NREL" means the National Renewable Energy Laboratory Division of the Midwest Research Institute, a not-for-profit Missouri Corporation, and includes its successors and assigns of the NREL Division of Midwest Research Institute. The NREL facility is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-98-GO10337 by the NREL Division of the Midwest Research Institute.
- J. The term "Subcontractor" as used herein includes lower-tier subcontractors, independent contractors, and all other classes of persons performing any type of work under this subcontract.

**CLAUSE 5 - RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES
TO NREL/GOVERNMENT (JUL 1995)**

Derived from FAR 52.203-6

(Applies to subcontracts exceeding \$100,000)

- A. Except as provided in (B) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this subcontract or under any follow-on production subcontract.
- B. The prohibition in (A) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- C. The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (C), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

CLAUSE 6 - ANTI-KICKBACK PROCEDURES (JUL 1995)

Derived from FAR 52.203-7 (FD)

(Applies to subcontracts exceeding \$100,000)

- A. Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

- B. The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --
1. Providing or attempting to provide or offering to provide any kickback;
 2. Soliciting, accepting, or attempting to accept any kickback; or
 3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher-tier subcontractor.
- C.
1. The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect violations described in paragraph (B) of this clause in its own operations and direct business relationships.
 2. When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (B) of this clause may have occurred, the Subcontractor shall promptly report

in writing the possible violation. Such reports shall be made to the DOE inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

3. The Subcontractor shall cooperate fully with any Federal agency and/or NREL investigating a possible violation described in paragraph (B) of this clause.
4. The DOE Contracting Officer may --
 - (i) Offset the amount of the kickback against any monies owed by NREL under this subcontract and/or
 - (ii) Direct that the Subcontractor withhold from sums owed the lower-tier subcontractor the amount of the kickback. The DOE Contracting Officer may order that monies withheld under subdivision (C)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or the Government has already offset those monies under subdivision (C)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.
5. The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (C)(5) but excepting subparagraph (C)(1), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

**CLAUSE 7 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS (JUN 1997)**

Derived from FAR 52-203-12

(Applies to subcontracts exceeding \$100,000)

A. Definitions.

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

1. The awarding of any Federal contract.
2. The making of any Federal grant.
3. The making of any Federal loan.
4. The entering into of any cooperative agreement.
5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local Government," as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a Local Government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.
4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and Local Government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibitions.

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - b. For purposes of subdivision (B)(3)(i)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

- c. The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - 1. Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - 2. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- d. The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --
 - 1. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - 2. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - 3. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L.95-507, and subsequent amendments.
- e. Only those services expressly authorized by subdivision (B)(3)(i)(a) of this clause are permitted under this clause.

(ii) Professional and technical services.

- a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) of this clause, does not apply in the case of --
 - 1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - 2. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for

professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- b. For purposes of subdivision (B)(3)(ii)(a) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- c. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- d. Only those services expressly authorized by subdivisions (B)(3)(ii)(a)(1) and (2) of this clause are permitted under this clause.
- e. The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

C. Disclosure.

- 1. The Subcontractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using

nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (B)(1) of this clause, if paid for with appropriated funds.

2. The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (C)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
3. The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
4. All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall submit all disclosures to the NREL Subcontract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

D. Agreement.

The Subcontractor agrees not to make any payment prohibited by this clause.

E. Penalties.

1. Any person who makes an expenditure prohibited under paragraph (A) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (B) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
2. Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

F. Cost allowability.

Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

CLAUSE 8 - AUDIT AND RECORDS -- NEGOTIATION (JUN 1999)

Derived from FAR 52.215-2 (FD)

(Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations)

- A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are written form, in the form of computer data, or in any other form.

B. Examination of Costs

If this a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.

C. Cost or pricing data

If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computation and projections, related to --

1. The proposal for the subcontract, lower-tier subcontract, or modification;
2. The discussions conducted on the proposal(s), including those related to negotiating;
3. Pricing of the subcontract, lower-tier subcontract, or modification; or
4. Performance of the subcontract, lower-tier subcontract, or modification.

D. Comptroller General

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

E. Reports

If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --

1. The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and

2. The data reported.

F. Availability

The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (A), (B), (C), (D), and (E) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition--

1. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
2. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

G. The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (G), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and --

1. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
2. For which cost or pricing data are required; or
3. That require the lower-tier subcontractor to furnish reports as discussed in paragraph (E) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.

Alternate II (JUN 1999)

(For Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (H) shall be added.)

H. The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

CLAUSE 9 - UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)

Derived from FAR 52.219-8 (FD)

(Applies to subcontracts exceeding \$100,000)

- A. It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their lower-tier subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

B. The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.

C. Definitions.

As used in this subcontract--

1. "Small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
2. "HUBZone small business concern" means a small business concern that appear on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
3. "Small business concern owned and controlled by socially and economically disadvantaged individuals" means an offeror that represents, as part of its offer, that-
 - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
 - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
 - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-NET).
4. "Small business concern owned and controlled by women" means a small business concern --
 - (i) Which is at least fifty one (51) percent owned by one or more women, or, in the case of any publicly owned business, at least fifty one (51) percent of the stock of which is owned by one or more women; and
 - (ii) Whose management and daily business operations are controlled by one or more women; and

D. Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

**CLAUSE 10 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT --
OVERTIME COMPENSATION (JUL 1995)**

Derived from FAR 52.222-4 (FD)

(Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)

A. Overtime requirements.

No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the provisions set forth in paragraph (A) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory), and/or NREL, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (A) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (A) of this clause.

C. Withholding for unpaid wages and liquidated damages.

The NREL Subcontract Administrator shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (B) of this clause.

D. Payrolls and basic records.

1. The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three (3) years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
2. The records to be maintained under paragraph (D)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription

by authorized representatives of Department of Energy, NREL, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

E. Lower-tier Subcontracts.

The Subcontractor or lower-tier subcontractor shall insert in any lower-tier subcontracts exceeding \$100,000 the provisions set forth in paragraphs (A) through (E) of this clause and also a clause requiring the lower-tier subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (A) through (E) of this clause.

CLAUSE 11 - WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

Derived from FAR 52.222-20

(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C.40).

CLAUSE 12 - EQUAL OPPORTUNITY (FEB 1999)

Derived from FAR 52.222-26 (FD)

- A. If, during any 12-month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with subparagraphs B (1) through (11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.
- B. During performance of this subcontract, the Subcontractor agrees as follows:
1. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
 2. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
 - (i) Employment,
 - (ii) Upgrading,
 - (iii) Demotion,
 - (iv) Transfer,
 - (v) Recruitment or recruitment advertising,
 - (vi) Layoff or termination,
 - (vii) Rates of pay or other forms of compensation, and
 - (viii) Selection for training, including apprenticeship.

3. The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.
 4. The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 5. The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the NREL Subcontract Administrator advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 6. The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 7. The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the subcontractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
 8. The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
 9. If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
 10. The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.
 11. The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL subcontract administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.
- C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1

CLAUSE 13 - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)
Derived from FAR 52.222-35 (FD)
(Applies to subcontracts exceeding \$10,000)

- A. Definitions. As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Subcontractor's organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who --

1. Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or
2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

B. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing openings.

1. The Subcontractor agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.
2. State and Local Government agencies holding Federal contracts or subcontracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
3. The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.
4. Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts/subcontracts. The Subcontractor may advise the State system when it is no longer bound by this subcontract clause.

D. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

E. Postings.

1. The Subcontractor agrees to post employment notices stating
 - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and

- (ii) The rights of applicants and employees.
 - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the NREL Subcontract Administrator.
 - 3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- F. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- G. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

CLAUSE 14 - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
Derived from FAR 52.222-36 (FD)
(Applies to subcontracts exceeding \$10,000)

- A. General.
- 1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;

- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- B. Postings.
1. The Subcontractor agrees to post employment notices stating --
- (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the DOE Contracting Officer.
3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- C. Noncompliance.
- If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- D. Lower-tier Subcontracts.
- The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**CLAUSE 15 - EMPLOYMENT REPORTS ON DISABLED VETERANS
AND VETERANS OF THE VIETNAM ERA (JAN 1999)**
Derived from FAR 52.222-37 (FD)
(Applies to subcontracts exceeding \$10,000)

- A. Unless the Subcontractor is a State or Local Government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on:

1. The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Subcontractor by job category and hiring location; and
 2. The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- C. Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- D. The employment activity report required by paragraph (A)(2) of this clause shall reflect total hires during the most recent twelve (12)-month period as of the ending date selected for the employment profile report required by paragraph (A)(1) of this clause. Subcontractors may select an ending date:
1. As of the end of any pay period during the period January through March 1st of the year the report is due, or
 2. As of December 31, if the Subcontractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- E. The count of veterans reported according to paragraph (A) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- F. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

CLAUSE 16 - AUTHORIZATION AND CONSENT (JUL 1995)
Derived from FAR 52-227-1 (FD)

- A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent
1. Embodied in the structure or composition of any article the delivery of which is accepted by the NREL/Government under this subcontract or;

2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--
 - (i) Specifications or written provisions forming a part of this subcontract or
 - (ii) Specific written instructions given by the Government working through NREL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

ALTERNATE I (APR 1984)

Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier

ALTERNATE II (APR 1984)

Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a Government regulatory body, of any invention described in and covered by a United States patent
 1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or

2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

CLAUSE 17 - INSURANCE--LIABILITY TO THIRD PERSONS (SPECIAL MAY 1999)

Derived from FAR 52.228-7

(Applies to cost reimbursement subcontracts)

- A.
 1. Except as provided in subparagraph (A)(2) of this clause, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the NREL Subcontract Administrator may require under this subcontract.
 2. The Subcontractor may, with the approval of the NREL Subcontract Administrator, maintain a self-insurance program; **provided** that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.
 3. The Subcontractor shall provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in this clause, with insurers approved by the NREL Subcontract Administrator.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As required by law	As required by law	
Employer's Liability	\$100,000	\$100,000	
Comprehensive General Liability	\$500,000	\$500,000	\$100,000
Automobile Liability	\$200,000	\$500,000	\$20,000

- B. The Subcontractor agrees to submit for the NREL Subcontract Administrator's approval, to the extent and in the manner required by the NREL Subcontract Administrator, any other insurance that is maintained by the Subcontractor in connection with the performance of this subcontract and for which the Subcontractor seeks reimbursement.
- C. The Subcontractor shall be reimbursed --
 1. For that portion
 - (i) Of the reasonable cost of insurance allocable to this subcontract, and
 - (ii) Required or approved under this clause; and

2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by NREL/Government. These liabilities are for --
 - (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or
 - (ii) Death or bodily injury.
- D. NREL's/Government's liability under paragraph (C) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- E. The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-
1. For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;
 2. For which the Subcontractor has failed to insure or to maintain insurance as required by the NREL Subcontract Administrator; or
 3. That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of --
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this subcontract is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this subcontract.
- F. The provisions of paragraph (E) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this subcontract, other than insurance required in accordance with this clause; **provided**, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.
- G. If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall --

1. Immediately notify the NREL Subcontract Administrator and promptly furnish copies of all pertinent papers received:
2. Authorize NREL/Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
3. Authorize NREL/Government representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by the NREL/Government, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with NREL/Government representatives in any such claim or litigation.

CLAUSE 18 - FEDERAL, STATE, AND LOCAL TAXES (COMPETITIVE SUBCONTRACT) (JAN 1991)

Derived from FAR 52.229-3

(Applies to fixed price subcontracts exceeding \$100,000)

- A. "Subcontract date," as used in this clause, means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

"All applicable Federal, State, and Local taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- B. The subcontract price includes all applicable Federal, State, and Local taxes and duties.
- C. The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.
- D. The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- E. The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or

does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.

- F. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs.
- H. The Government through NREL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or Local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

CLAUSE 19 - FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE SUBCONTRACT) (JAN 1991)

Derived from FAR 52.229-4

(Applies to fixed price subcontracts exceeding \$100,000)

- A. "Subcontract date," as used in this clause, means the effective date of this subcontract and, for any modification to this subcontract, the effective date of the modification.

"All applicable Federal, State, and Local taxes and duties," as used in this clause, means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-imposed tax," as used in this clause, means any new or increased Federal, State, or Local tax or duty, or tax that was excluded on the subcontract date but whose exclusion was later revoked or amount of exemption reduced during the subcontract period, other than an excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause, means any amount of Federal, State, or Local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the Government.

- B. Unless otherwise provided in this subcontract, the subcontract price includes all applicable Federal, State, and Local taxes and duties.
- C. The subcontract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the subcontract price by a term or condition of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- D. The subcontract price shall be decreased by the amount of any after-relieved tax. NREL/Government shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. NREL/Government shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.
- E. The subcontract price shall be decreased by the amount of any Federal, State, or Local tax, other than an excepted tax, that was included in the subcontract price and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- F. No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to Federal, State, and Local taxes and duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorney's fees.
- H. The Government through NREL shall furnish evidence appropriate to establish exemption from any Federal, State, or Local tax when --
 - 1. The Subcontractor requests such exemption and states in writing that it applies to a tax excluded from the subcontract price, and
 - 2. A reasonable basis exists to sustain the exemption.

**CLAUSE 20 - TAXES -- SUBCONTRACTS PERFORMED IN U.S. POSSESSIONS OR
PUERTO RICO (APR 1984)**
Derived from FAR 52.229-5

The term "Local Taxes," as used in the Federal, State, and Local taxes clause of this subcontract, includes taxes imposed by a possession of the United States or by Puerto Rico.

CLAUSE 21 - LIMITATION OF COST (APR 1984)

Derived from FAR 52.232-20

(Applies to fully funded, cost reimbursement subcontracts)

- A. The parties estimate that performance of this subcontract, exclusive of any fee, will not cost NREL more than --
 - 1. The estimated cost specified in the Schedule or,
 - 2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.
- B. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that --
 - 1. The costs the Subcontractor expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
 - 2. The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- C. As part of the notification, the Subcontractor shall provide the NREL Subcontract Administrator a revised estimate of the total cost of performing this subcontract.
- D. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
 - 1. NREL is not obligated to reimburse the Subcontractor for cost incurred in excess of
 - (i) The estimated cost specified in the Schedule or,
 - (ii) If this is a cost-sharing subcontract, the estimated cost to NREL specified in the Schedule; and
 - 2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the NREL Subcontract Administrator --
 - (i) Notifies the Subcontractor in writing that the estimated cost has been increased and

- (ii) Provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- E. No notice, communication, or representation in any form other than that specified in subparagraph (D)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect this subcontract's estimated cost to NREL. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a cost-sharing subcontract, for any costs in excess of the estimated cost to NREL specified in the Schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.
- F. If the estimated cost specified in the Schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G. Change orders shall not be considered an authorization to exceed the estimated cost to NREL specified in the Schedule, unless they contain a statement increasing the estimated cost.
- H. If this subcontract is terminated or the estimated cost is not increased, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

CLAUSE 22 - LIMITATION OF FUNDS (APR 1984)

Derived from FAR 52.232-22

(Applies to incrementally funded, cost reimbursement subcontracts)

- A. The parties estimate that performance of this subcontract will not cost NREL more than
 - 1. The estimated cost specified in the Schedule or,
 - 2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

- B. The Schedule specifies the amount presently available for payment by NREL and allotted to this subcontract, the items covered, NREL's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that NREL will allot additional funds incrementally to the subcontract up to the full estimated cost to NREL specified in the Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and

payable by NREL under the subcontract approximates but does not exceed the total amount actually allotted by NREL to the subcontract.

- C. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of--
 - 1. The total amount so far allotted to the subcontract by NREL or,
 - 2. If this is a cost-sharing subcontract, the amount then allotted to the subcontract by NREL plus the Subcontractor's corresponding share.

The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

- D. Sixty (60) days before the end of the period specified in the Schedule, the Subcontractor shall notify the NREL Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- E. If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Subcontractor's written request the NREL Subcontract Administrator will terminate this subcontract on that date in accordance with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the NREL Subcontract Administrator may terminate this subcontract on that later date.
- F. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
 - 1. NREL is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NREL to this subcontract; and
 - 2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of --
 - (i) The amount then allotted to the subcontract by NREL or;
 - (ii) If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, until the NREL Subcontract Administrator notifies the Subcontractor in writing that the amount allotted by NREL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NREL to this subcontract.
- G. The estimated cost shall be increased to the extent that

1. The amount allotted by NREL or,
2. If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the Schedule.

If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.

- H. No notice, communication, or representation in any form other than that specified in subparagraph (F)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect the amount allotted by NREL to this subcontract. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by NREL to this subcontract, whether incurred during the course of the subcontract or as a result of termination.
- I. When and to the extent that the amount allotted by NREL to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of --
1. The amount previously allotted by NREL or;
 2. If this is a cost-sharing subcontract, the amount previously allotted by NREL to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- J. Change orders shall not be considered an authorization to exceed the amount allotted by NREL specified in the Schedule, unless they contain a statement increasing the amount allotted.
- K. Nothing in this clause shall affect the right of NREL/Government to terminate this subcontract. If this subcontract is terminated, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.
- L. If NREL does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this subcontract.

CLAUSE 23 - BANKRUPTCY (JUL 1995)

Derived from FAR 52.242-13

(Applies to subcontracts exceeding \$100,000)

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of

the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

**CLAUSE 24 - STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 -
COST REIMBURSEMENT (AUG 1989)**

Derived from FAR 52.242-15

- A. The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either --
1. Cancel the stop-work order; or
 2. Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if --
1. The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
 2. The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

Alternate I (Apr 1984)

If this clause is inserted in a cost-reimbursement subcontract, substitute in paragraph (A)(2) the words "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of the Government clause of this subcontract." In paragraph (B) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words "an equitable adjustment in the delivery schedule or subcontract price, or both."

CLAUSE 25 - CHANGES - TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987)

Derived from FAR 52.243-3

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
1. Drawings, designs, or specifications.
 2. Method of shipment or packing.
 3. Place of delivery.
 4. Amount of Government-furnished property.
- B. If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the NREL Subcontract Administrator shall make an equitable adjustment in the --
1. Ceiling price,
 2. Hourly rates,
 3. Delivery schedule, and
 4. Other affected terms, and shall modify the subcontract accordingly.
- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

CLAUSE 26 - LOWER-TIER SUBCONTRACTS (AUG 1998)

Derived from FAR 52.244-2

(Applies to all cost reimbursement subcontracts, and letter; fixed price; time and material; and labor hour subcontracts exceeding \$100,000)

- A. Definitions.

As used in this clause-

"Approved purchasing system" means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR)

"Consent to lower-tier subcontract" means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.

"Lower-tier subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier subcontractor to furnish supplies or services for performance of the prime contract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- B. This clause does not apply to lower-tier subcontracts for special test equipment when the subcontract contains the clause at FAR 52.245-18, Special Test Equipment.

- C. When this clause is included in a fixed-price type subcontract, consent to lower-tier subcontract is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (D)(or (E) or this clause.
- D. If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that--
1. Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 2. Is fixed-price and exceeds--
 - (i) For a subcontract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract; or
 - (ii) For subcontracts awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract.
- E. If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator's written consent before placing the following lower-tier subcontracts:

Lower tier subcontracts requiring written consent are identified in the subcontract schedule.

- F. 1. The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (C), (D), or (E) of this clause, including the following information:
- (i) A description of the supplies or services to be lower-tier subcontracted.
 - (ii) Identification of the type of lower-tier subcontract to be used.
 - (iii) Identification of the proposed lower-tier subcontractor.
 - (iv) The proposed lower-tier subcontract price.
 - (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
 - (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.
 - (vii) A negotiation memorandum reflecting --

- a. The principal elements of the lower-tier subcontract price negotiations;
 - b. The most significant considerations controlling establishment of initial or revised prices;
 - c. The reason cost or pricing data were or were not required;
 - d. The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - e. The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
 - f. The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - g. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- 2. The Subcontractor is not required to notify the NREL Subcontract Administrator in advance of entering into any lower-tier subcontract for which consent is not required under paragraph (C), (D), or (E) or this clause.
- G. Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination --
 - 1. Of the acceptability of any subcontract terms or conditions;
 - 2. Of the allowability of any cost under this subcontract; or
 - 3. To relieve the Subcontractor of any responsibility for performing this subcontract.
- H. No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- I. The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation

related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.

- J. NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- K. Paragraphs (D) and (F) of this clause do not apply to the following lower-tier subcontracts, which were evaluated during negotiations:

Lower tier subcontracts evaluated during negotiations are identified in the subcontract schedule.

CLAUSE 27 - SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

Derived from FAR 52.244-6

(Applies to solicitations and subcontracts for supplies or services other than commercial items)

- (a) Definitions.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O.11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212(a));
 - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C.793); and
 - (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C.1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

CLAUSE 28 - GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)

Derived from FAR 52.245-4

(Applies to fixed price; time and material; labor hour subcontracts where Government Furnished Property acquisition cost is \$100,000 or less)

- A. NREL/Government shall deliver to the Subcontractor, at the time and locations stated in this subcontract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, the NREL Subcontract Administrator shall equitably adjust affected provisions of this subcontract in accordance with the Changes clause when --
 - 1. The Subcontractor submits a timely written request for an equitable adjustment; and
 - 2. The facts warrant an equitable adjustment.
- B. Title to Government-furnished property shall remain in the Government. The Subcontractor shall use the Government-furnished property only in connection with this subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this subcontract.
- C. Upon delivery of Government-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except --
 - 1. For reasonable wear and tear;
 - 2. To the extent property is consumed in performing this subcontract; or
 - 3. As otherwise provided for by the provisions of this subcontract.
- D. Upon completing this subcontract, the Subcontractor shall follow the instructions of the NREL Subcontract Administrator regarding the disposition of all Government-furnished property not consumed in performing this subcontract or previously delivered to the Government. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the NREL Subcontract Administrator. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to the Government as directed by the NREL Subcontract Administrator.
- E. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**CLAUSE 29 - GOVERNMENT PROPERTY - TIME-AND-MATERIAL, OR
LABOR-HOUR SUBCONTRACTS - (JAN 1986)**

Derived from FAR 52.245-5

(Applies to cost reimbursable subcontracts exceeding \$100,000)

A. Government-furnished property.

1. The term "Subcontractor's managerial personnel," as used in paragraph (G) of this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing this subcontract.
2. NREL shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
3. The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
4. If Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the NREL Subcontract Administrator, detailing the facts, and, as directed by the NREL Subcontract Administrator and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the NREL Subcontract Administrator shall make an equitable adjustment as provided in paragraph (H) of this clause.
5. If Government-furnished property is not delivered to the Subcontractor by the required time or times, the NREL Subcontract Administrator shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (H) of this clause.

B. Changes in Government-furnished property.

1. The NREL Subcontract Administrator may, by written notice,
 - (i) Decrease the Government-furnished property provided or to be provided under this subcontract; or

- (ii) Substitute other Government-furnished property for the property to be provided by NREL or to be acquired by the Subcontractor for NREL under this subcontract. The Subcontractor shall promptly take such action as the NREL Subcontract Administrator may direct regarding the removal, shipment, or disposal of the property covered by this notice.
 - 2. Upon the Subcontractor's written request, the NREL Subcontract Administrator shall make an equitable adjustment to the subcontract in accordance with paragraph (H) of this clause, if NREL has agreed in the Schedule to make such property available for performing this subcontract and there is any --
 - (i) Decrease or substitution in this property pursuant to subparagraph (B)(1) above; or
 - (ii) Withdrawal of authority to use property, if provided under any other subcontract or lease.
- C. Title.
- 1. The Government shall retain title to all Government-furnished property.
 - 2. Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
 - 3. Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in the Government upon --
 - (i) Issuance of the property for use in subcontract performance;
 - (ii) Commencement of processing of the property or use in subcontract performance; or
 - (iii) Reimbursement of the cost of the property by NREL, whichever occurs first.
 - 4. All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- D. Use of Government property.
- The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the NREL Subcontract Administrator.
- E. Property administration.

1. The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.
2. The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
3. If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, NREL shall replace the items or the Subcontractor shall make such repairs as NREL directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the NREL Subcontract Administrator. When any property for which NREL is responsible is replaced or repaired, the NREL Subcontract Administrator shall make an equitable adjustment in accordance with paragraph (H) of this clause.

F. Access.

NREL/Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Limited risk of loss.

1. The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
2. The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage) --
 - (i) That results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (iii) For which the Subcontractor is otherwise responsible under the express terms of this subcontract;
 - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's management personnel; or
 - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial

personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (E) of this clause.

3.
 - (i) If the Subcontractor fails to act as provided by subdivision (G)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of NREL's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
 - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage --
 - (a) Did not result from the Subcontractor's failure to maintain an approved program or system; or
 - (b) Occurred while an approved program or system was maintained by the Subcontractor.
4. If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the NREL Subcontract Administrator, relieves the Subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.
5. Upon loss or destruction of, or damage to, Government property provided under this subcontract, the Subcontractor shall so notify the NREL Subcontract Administrator and shall communicate with the loss and salvage organization, if any, designated by the NREL Subcontract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the NREL Subcontract Administrator a statement of --
 - (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;

- (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- 6. The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the NREL Subcontract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the NREL Subcontract Administrator, sell such property for the account of NREL and the Government. Such sales may be made in order to minimize the loss to NREL/Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (G)(6) in accordance with paragraph (H) of this clause. However, NREL may directly reimburse the loss and salvage organization for any of their charges. The NREL Subcontract Administrator shall give due regard to the Subcontractor's liability under this paragraph (G) when making any such equitable adjustment.
- 7. The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that NREL may have expressly required the Subcontractor to carry such insurance under another provision of this subcontract.
- 8. In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, NREL and the Government, as directed by the NREL Subcontract Administrator.
- 9. The Subcontractor shall do nothing to prejudice NREL/Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the NREL Subcontract Administrator, the Subcontractor shall, at the Government's expense, furnish to NREL/Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of NREL/Government) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of NREL and the Government the liability of the lower-tier subcontractor for such loss, destruction, or damage.

H. Equitable adjustment.

When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the NREL

Subcontract Administrator may initiate an equitable adjustment in favor of NREL. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. NREL and the Government shall not be liable to suit for breach of subcontract for --

1. Any delay in delivery of Government-furnished property;
2. Delivery of Government-furnished property in a condition not suitable for its intended use;
3. A decrease in or substitution of Government-furnished property; or
4. Failure to repair or replace Government property for which NREL is responsible.

I. Final accounting and disposition of Government property.

Upon completing this subcontract, or at such earlier dates as may be fixed by the NREL Subcontract Administrator, the Subcontractor shall submit, in a form acceptable to the NREL Subcontract Administrator, inventory schedules covering all items of Government property not consumed in performing this subcontract or delivered to NREL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the NREL Subcontract Administrator. The net proceeds of any such disposal shall be credited to the cost of the work covered by this subcontract or paid to NREL/Government as directed by the NREL Subcontract Administrator. The foregoing provisions shall apply to scrap from Government property; **provided**, however, that the NREL Subcontract Administrator may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

J. Abandonment and restoration of Subcontractor premises.

Unless otherwise provided herein, NREL --

1. May abandon any Government property in place, at which time all obligations of NREL and the Government regarding such abandoned property shall cease; and
2. Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (H) of this clause may properly include restoration or rehabilitation costs.

K. Communications.

All communications under this clause shall be in writing.

L. Overseas subcontracts.

If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

CLAUSE 30 - INSPECTION - TIME-AND-MATERIAL AND LABOR-HOUR (JAN 1986)
Derived from FAR 52.246-6

A. Definition.

"Subcontractors managerial personnel," as used in this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

1. All or substantially all of the Subcontractor's business;
2. All or substantially all of the Subcontractor's operation at any one plant or separate location at which the subcontract is being performed; or
3. A separate and complete major industrial operation connected with the performance of this subcontract.

"Materials," as used in this clause, includes data when the subcontract does not include the Warranty of Data clause.

- B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the material, fabricating methods, work, and services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.
- C. NREL/Government has the right to inspect and test all materials furnished and services performed under this subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. NREL/Government may also inspect the plant or plants of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The Government/ NREL shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If NREL/Government performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. Unless otherwise specified in the subcontract, NREL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted sixty (60) days after the date of delivery, unless accepted earlier.

- F. At any time during subcontract performance but not later than six (6) months (or such other time as may be specified in the subcontract) after acceptance of the services or materials last delivered under this subcontract, NREL may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet subcontract requirements. Except as otherwise specified in paragraph (H) of this clause, the cost of replacement or correction shall be determined under the Payment Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- G. 1. If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by NREL), NREL may--
- (i) By subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts, paid or due under this subcontract; or
 - (ii) Terminate this subcontract for default.
2. Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute.
- H. Notwithstanding paragraphs (F) and (G) above, NREL may at any time require the Subcontractor to remedy by correction or replacement, without cost to NREL, any failure by the Subcontractor to comply with the requirements of this subcontract, if the failure is due to--
- 1. Fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or
 - 2. The conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- I. This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this subcontract.
- J. The Subcontractor has no obligation or liability under this subcontract to correct or replace materials and services that at time of delivery do not meet subcontract requirements, except as provided in this clause or as may be otherwise specified in the subcontract.
- K. Unless otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

CLAUSE 31 - PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

Derived from FAR 52.247-63 (FD)

- A. "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- D. In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): *(State reasons)*:

- E. The Subcontractor shall include the substance of this clause, including this paragraph (E), in each lower-tier subcontract or purchase under this subcontract that may involve international air transportation.

**CLAUSE 32 - TERMINATION (COST-REIMBURSEMENT) (SEP 1996) AND
ALTERNATE IV - (TIME-AND-MATERIAL OR LABOR-HOUR) (SEP 1996)**

Derived from FAR 52.249-6 (FD)

(Applies to cost reimbursement subcontracts except subcontracts for research and development work with educational or nonprofit institutions)

- A. NREL may terminate performance of work under this subcontract in whole or, from time to time, in part, if --
 - 1. The NREL Subcontract Administrator determines that a termination is in NREL's/Government's interest; or
 - 2. The Subcontractor defaults in performing this subcontract and fails to cure the default within ten (10) days (unless extended by the NREL Subcontract Administrator) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- B. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of NREL/Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of NREL/Government.
- C. After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - 1. Stop work as specified in the notice.
 - 2. Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.
 - 3. Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
 - 4. Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - 5. With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.

6. Transfer title to the Government (if not already transferred) and, as directed by the NREL Subcontract Administrator, deliver to NREL --
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.
7. Complete performance of the work not terminated.
8. Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which NREL/Government has or may acquire an interest.
9. Use its best efforts to sell, as directed or authorized by the NREL Subcontract Administrator, any property of the types referred to in subparagraph (C)(6) of this clause; **provided**, however, that the Subcontractor--
 - (i) Is not required to extend credit to any purchaser; and
 - (ii) May acquire the property under the conditions prescribed by, and at prices approved by, the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.
- D. The Subcontractor shall submit complete termination inventory schedules no later than one hundred twenty (120) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one hundred twenty (120)-day period.
- E. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Subcontractor may submit to the NREL Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the NREL Subcontract Administrator. The Subcontractor may request the NREL/Government to remove those items or enter into an agreement for their storage. Within fifteen (15) days, NREL/Government will accept the items and remove them or enter into a storage agreement. The NREL Subcontract Administrator may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

- F. After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this one (1)-year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- G. Subject to paragraph (F) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.
- H. If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount, which shall include the following:
1. All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of termination, and those costs that may continue for a reasonable time with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue those costs as rapidly as practicable.
 2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (H)(1) of this clause.
 3. The reasonable costs of settlement of the work terminated, including--
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.
 4. A portion of the fee payable under the subcontract, determined as follows:
 - (i) If the subcontract is terminated for the convenience of NREL/Government, the settlement shall include a percentage of the fee equal to the percentage of

completion of work contemplated under the subcontract, but excluding subcontract effort included in lower-tier subcontractor's termination proposals, less previous payments for fee.

- (ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by NREL is to the total number of articles (or amount of services) of a like kind required by the subcontract.
- 5. If the settlement includes only fee, it will be determined under subparagraph (H)(4) of this clause.
- I. The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.
- J. The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (F), (H), or (L) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (F) and failed to request a time extension, there is no right of appeal. If the NREL Subcontract Administrator has made a determination of the amount due under paragraph (F), (H), or (L) of this clause, NREL shall pay the Subcontractor--
 - 1. The amount determined by the NREL Subcontract Administrator if there is no right of appeal or if no timely appeal has been taken; or
 - 2. The amount finally determined on an appeal.
- K. In arriving at the amount due the Subcontractor under this clause, there shall be deducted --
 - 1. All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this subcontract.
 - 2. Any claim which NREL/Government has against the Subcontractor under this subcontract; and
 - 3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to NREL/Government.
- L. The Subcontractor and NREL Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The NREL Subcontract Administrator shall amend the subcontract to reflect the agreement.
- M.
 - 1. NREL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

2. If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.
- N. The provisions of the clause relating to fee are inapplicable if this subcontract does not include a fee.

ALTERNATE IV (SEP 1996).

(If the subcontract is a TIME-AND-MATERIAL or LABOR- HOUR subcontract, substitute the following paragraphs (H) and (L) for paragraphs (H) and (L) of the basic clause:)

- H. If the Subcontractor and the NREL Subcontract Administrator fail to agree in whole or in part on the amount to be paid because of the termination of work, the NREL Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount determined as follows:
1. If the termination is for the convenience of NREL/Government, include--
 - (i) An amount for direct labor hours (as defined in the Schedule of the subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Subcontractor;
 - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Subcontractor;
 - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the NREL Subcontract Administrator; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
 - (iv) If not included in subdivision (H)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract; and
 - (v) The reasonable costs of settlement of the work terminated, including--
 - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- b. The termination and settlement of Lower-tier subcontracts (excluding the amounts of such settlements); and
 - c. Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- 2. If the termination is for default of the Subcontractor, include the amounts computed under subparagraph (H)(1) of this clause but omit--
 - (i) Any amount for preparation of the Subcontractor's termination settlement proposal; and
 - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by NREL/Government.

* * * * *

- I. If the termination is partial, the Subcontractor may file with the NREL Subcontract Administrator a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator.

CLAUSE 33 - EXCUSABLE DELAYS (APR 1984)

Derived from FAR 52.249-14 (FD)

(Applies to cost reimbursement subcontracts on a fee basis)

- A. Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are--
 - 1. Acts of God or of the public enemy,
 - 2. Acts of the Government in either its sovereign or contractual capacity,
 - 3. Fires,
 - 4. Floods,
 - 5. Epidemics,
 - 6. Quarantine restrictions,
 - 7. Strikes,

8. Freight embargoes, and
9. Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

- B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless--
 1. The lower-tier subcontracted supplies or services were obtainable from other sources;
 2. The NREL Subcontract Administrator ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
 3. The Subcontractor failed to comply reasonably with this order.
- C. Upon request of the Subcontractor, the NREL Subcontract Administrator shall ascertain the facts and extent of the failure. If the NREL Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of NREL/Government under the termination clause of this subcontract.

CLAUSE 34 - REFUND OF ROYALTIES (FEB 1995)

Derived from DEAR 952.227-9 (FD)

- A. The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the DOE through NREL.
- B. The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any lower-tier subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.
- C. The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.
- D. The Subcontractor will be compensated for royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and

allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

- E. If, at any time within three (3) years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor shall promptly notify the DOE through NREL of that fact and shall reimburse the Government in a corresponding amount.
- F. The substance of this clause, including this paragraph (F), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

CLAUSE 35 - FOREIGN TRAVEL (FEB 1997)

Derived from DEAR 952.247-70 (FD)

- A. Foreign travel, when charged directly, shall be subject to the prior approval of the NREL Subcontract Administrator for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- B. Request for approval shall be submitted at least forty-five (45) days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

CLAUSE 36 - INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)

Derived from DEAR 970.5204-2 (FD)

(Applies to subcontracts that involve complex or hazardous work that is to be performed on a Government-owned or -leased facility.)

- A. For the purposes of this clause,
 - 1. "Safety" encompasses environment, safety, and health, including pollution prevention and waste minimization; and
 - 2. "Employees" include Lower-tier subcontractor employees.
- B. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an

integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:

1. Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
 2. Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 5. Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 7. The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- C. The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (B) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
1. Define the scope of work;
 2. Identify and analyze hazards associated with the work;
 3. Develop and implement hazard controls;
 4. Perform work within controls; and
 5. Provide feedback on adequacy of controls and continue to improve safety management.

- D. The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- E. The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.
- F. The Subcontractor shall comply with, and assist the DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by a NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower-tier subcontractor in accordance with paragraph (I) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- H. The Subcontractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- I. The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (G) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may require that the lower-tier subcontractor submit a Safety Management System for the Subcontractor's review and approval.

CLAUSE 37 - ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)
Derived from DEAR 970.5204-9 (FD)

A. Accounts.

The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be acceptable to NREL/Government and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and Audit of Accounts and Records.

All books of account and records relating to this subcontract shall be subject to inspection and audit by NREL/Government at all reasonable times, before and during the period of retention provided for in (D) below, and the Subcontractor shall afford proper facilities for such inspection and audit.

C. Audit of Subcontractors' Records.

The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant Government audit agency through the NREL Subcontract Administrator.

D. Disposition of Records.

Except as agreed upon by NREL and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this subcontract, shall be the property of the Government, and shall be delivered to NREL or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as provided in this subcontract, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.

E. Reports.

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator may from time to time require.

F. Inspections.

NREL/Government shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

G. Lower-tier Subcontracts.

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (A) through (G) and paragraph (I) of this clause in all lower-tier subcontracts (including fixed price or unit price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor.

(The following paragraph (H) shall be included in--

- 1. All cost-type subcontracts (or lower-tier subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than two (2) years, and*
- 2. Any other cost-type subcontract (or lower-tier subcontract) where deemed advisable by the DOE Head of the Contracting Activity and when the Subcontractor (or lower-tier subcontractor) already has an established internal audit organization.)*

H. Internal Audit.

The Subcontractor agrees to conduct an internal audit and examination satisfactory to NREL/Government of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the NREL Subcontract Administrator.

I. Comptroller General.

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
3. Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

CLAUSE 38 - PRINTING CLAUSE FOR SUBCONTRACTS (APR 1984)

Derived from DEAR 970.5204-19 (FD)

- A. To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- B. The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- C. Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- D. In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

CLAUSE 39 - PERMITS OR LICENSES (APR 1984)

Derived from DEAR 970.5204-29

Except as otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

CLAUSE 40 - ACCESS SECURITY (SPECIAL)(APR 1999)

- A. Access to NREL operated facilities is controlled in accordance with the DOE's requirements. The Subcontractor shall ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents be specifically authorized site access by an NREL employee, and identified, badged, and registered by NREL Security prior to entering any NREL operated facility.
- B. The Subcontractor shall further ensure that any of its, or its lower-tier subcontractors, officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work on NREL operated facilities for a total of thirty (30) calendar days or greater, or who are citizens of a DOE designated sensitive country, or who work for a company based in a sensitive country, or who are stateless persons, submit a completed DOE Form IA 473 to NREL six to eight weeks before access is required. Access shall be subject to DOE approval. Any such person denied access by DOE shall not be assigned by the Subcontractor to work at NREL operated facilities.

- C. The Subcontractor shall provide to the Subcontract Administrator, prior to the initiation of work, evidence, including visa types and expiration dates, that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service, and such permits are properly maintained, for any of its, or its lower-tier subcontractors officers, employees, or agents who are not U.S. citizens or U.S. permanent residents and who will perform subcontract work at NREL operated facilities.
- D. Further, after the Subcontractor, or its lower-tier subcontractors, has commenced subcontract work, the Subcontractor shall provide to the Subcontract Administrator similar advance notice, including visa types and expiration dates, for all subsequently assigned individuals who are not U.S. citizens or U.S. permanent residents who will perform subcontract work at NREL operated facilities.
- E. NREL reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.
- F. As a condition of entry to NREL premises, the Subcontractor agrees to permit NREL security personnel to search its, and its lower-tier subcontractors, officers, employees, or agents vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles access to NREL premises or to detect or deter the unauthorized removal of Government property from NREL.
- G. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), or alcoholic beverages.
- H. The Subcontractor shall include this article, including this Paragraph H, in all lower-tier subcontracts involving work at NREL operated facilities.